

SEP - 8 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C., 20554**

In re Application of)

METROPOLITAN WASHINGTON AIRPORTS)
AUTHORITY)

Request for Declaratory Ruling)

Regarding Demarcation Point at)

Washington Dulles International Airport)

File No.

95-149

**METROPOLITAN WASHINGTON AIRPORTS AUTHORITY RESPONSE TO
MOTION OF GTE SOUTH INCORPORATED FOR
PUBLIC NOTICE AND COMMENT**

GTE South Incorporated ("GTE") has petitioned the Commission to issue a Public Notice calling for comment on the Request for Declaratory Ruling filed by the Washington Metropolitan Airports Authority ("Authority"). In its motion GTE has acknowledged the legitimacy of the operational imperatives that have led the Authority to seek expedition, and has provided some assurance that the inevitable delay resulting from a notice and comment proceeding will not interfere with the Authority's operational requirements. In these circumstances, although the Authority sees no purpose to public comment on a purely legal issue involving two parties in a fact specific dispute, we do not object to the establishment of an accelerated comment and reply comment cycle.

The Authority was constrained to seek an expedited ruling from the Commission as to the establishment of the demarcation point at Dulles International Airport in order to avoid disruption and delay in the completion of two major undertakings at Dulles. The

first of these is the expansion of the main terminal which will double in size. Correlative to this is the need to make final decisions with respect to the location of telecommunications infrastructure so that installation of that infrastructure can be completed by the end of January, 1996. We were concerned that, given our inability to resolve the demarcation point issue despite over two years of negotiations and GTE's shifting positions, GTE would insist upon entitlement to space in the telephone closets and of ownership of the infrastructure in the expanded main terminal building. GTE has now represented that construction in the main terminal "is clearly" on the Authority's "side of any demarcation point the Commission might approve." Motion of GTE South Incorporated for Public Notice and Comment at 6 (hereafter "GTE Motion"). GTE's stipulation removes the Authority's concern in this respect.

The second major project implicated by the dispute between GTE and the Authority is the institution of Shared Tenant Service ("STS") itself. As explained in the Motion for Expedition, the Authority has instructed its STS concessionaire, Harris Corporation, to proceed with construction of a telecommunications infrastructure which essentially parallels that of GTE but is much more up to date. STS service is scheduled to begin at the end of January, 1996. The Authority was concerned that, absent resolution of the demarcation point issue, GTE would refuse to interconnect with the STS system, thus denying the Authority and those of its tenants that elect shared tenant service that service option. Although the Authority has not seen GTE's response to the Request for Declaratory Ruling, GTE's has acknowledged that it has the "duty to provide service to any customer" and states that its objection to the Authority's current plan "only extends to [Authority's] insistence that GTE abandon its existing local exchange network." GTE

Motion at 4, 8 (emphasis added). This suggests that GTE does not intend to hold the institution of STS service captive to a resolution to the demarcation issue and will provide local exchange to the STS at the Harris frame in Building 8. This has allayed the Authority's concern somewhat.

The question remains whether any purpose would be served by inviting public comment on the narrow legal issue presented by the Authority's Request for Declaratory ruling. The Authority sees none. GTE advances three arguments in support of its claim that the Authority's Request for Declaratory Ruling raises "important public policy issues of first impression." GTE's motion at 2. They are thoroughly unconvincing.

First, GTE seeks to invent a communications policy conflict between the Authority and its tenants. It asserts that the tenants must be heard from because the Commission's ruling will have a "profound impact on their practical ability. . . to take service directly from GTE" and that the Authority's insistence upon a single demarcation point amounts to an unlawful abrogation of the existing service contracts between GTE and its customers. GTE Motion at 2, 4. The argument is specious because it improperly melds matters of "service" with matters of wiring and associated equipment. The Virginia rules regarding shared tenant service provide that all customers within the shared tenant complex must "have the option" of obtaining service directly from GTE; and the Dulles STS operation will afford all tenants at the Airport that option. Request for Declaratory Ruling at 4, Exhibit 1. The issue presented by the Authority's Request has nothing to do with provision of service. It has to do only with the establishment of a demarcation point and the resultant allocation of responsibility for installation, maintenance and repair of "intrasystem wiring." Procedures for Implementing the Detariffing of Customer

Premises Equipment and Enhanced Services, 95 F.C.C. 2d 1276, 1380 F 134 (1983). The question of cost associated with the installation, maintenance and repairs of intrasystem wiring is, of course, purely a matter of the contractual relationships between the Authority and its tenants. There is no cognizable communications policy conflict between the Authority and its tenants.

Second, GTE attempts to manufacture a communications policy conflict between the Authority and the Virginia State Corporation Commission ("VSCC"). This is equally baseless. There is nothing in the Authority's Request for Declaratory Ruling which calls into question the authority of the VSCC to enforce GTE's duty to serve any customer (who wishes service) within its certificated territory. Nor is there anything in the request that implicates the VSCC authority to determine the scope of regulation of an entity that it is engaged in the provision of intrastate telecommunications services. GTE's repeated, self serving insistence that the facilities it has installed at Dulles constitute a "local exchange network" begs the only question that is raised by the Authority's request for Declaratory ruling. The whole purpose of establishing a demarcation point is to differentiate between facilities and equipment that are, indeed, a part of the "local exchange network" and those which are properly classified as "intrasystem wiring". That question is a matter of federal law. There is nothing in our request that implicates or detracts from the legitimate and proper responsibilities of the VSCC to regulate intrastate telecommunications services and the entities that provide such services.

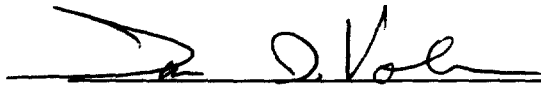
Third, GTE asserts that its (potential) intrastate service competitors have an interest in this proceeding and should be heard from before the Commission resolves this dispute. The short answer to this claim is that the Section 68.3 applies to all facility based

telecommunications service providers. Indeed, as the Authority has pointed out, one of the purposes of its request for a Commission determination is to assure that there is a single demarcation point for all present and potential providers of intrastate service to Dulles. Request for Declaratory Ruling at 9. The views of GTE's potential competitors as to the "important public policy" (GTE Motion at 2) goals of Section 68.3 are utterly irrelevant to resolution of this proceeding.

In the last analysis, GTE seeks to raise "public interest" issues either in the wrong forum or in the wrong proceeding, or both. To the extent that GTE believes that section 68.3 seriously interferes with the service interests of customers on the premises-owner side of a demarcation point, its remedy lies in the initiation of a proceeding before this Commission to amend or repeal it. To the extent that GTE is genuinely concerned that the implementation of unpartitioned shared tenant service at facilities like Dulles threatens the re-creation of a "bottleneck monopolist", its remedy lies with the VSCC. The only issue presented in this proceeding is the application of a rule that has been on the books for a number of years to a dispute which is fact specific, and involves only two parties, GTE and the Authority. The Authority fails to see what purpose would be served by soliciting comment on concerns which are utterly irrelevant to the dispute. If the

Commission concludes otherwise, the Authority asks only that it establish an accelerated comment and reply comment cycle so that this matter can finally be brought closure.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "I. Volner", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was sent by first-class mail, postage prepaid, or hand-delivered, on this 8th day of September, 1995, to the following persons:


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